

1 THE HONORABLE ROBERT S. LASNIK
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10 UNITED STATES DISTRICT COURT
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12 JAMES MCDONALD,
13 Plaintiff,
14 v.
15 ONEWEST BANK, FSB, NORTHWEST
16 TRUSTEE SERVICES, INC., MORTGAGE
17 ELECTRONIC REGISTRATION SYSTEMS,
18 INC., INDYMAC BANK FSB, DOES 1-50,
19 Defendants.

No. 2:10-cv-01952-RSL

REPLY IN SUPPORT OF ONEWEST'S
MOTION TO SCHEDULE EXPERT
DISCOVERY

Introduction

Plaintiff has filed a pleading entitled Response to Defendant OneWest's Motion to Schedule Expert Discovery & Counter motion to Compel Discovery Regarding Authenticity of the Note. Defendant OneWest addresses the response and counter motion in separate briefs.

The Motion to Schedule Expert Discovery Should be Granted

Plaintiff opposes defendant OneWest's previously unopposed motion for an order to schedule expert discovery for OneWest on the grounds that the request "is merely a ruse consistent with the recalcitrant behavior exhibited in the case concerning discovery," and that

1 the discovery will be “prolonged and costly.” (Docket #248, p. 5.)

2 One of the few remaining factual issues in this case is whether OneWest presently holds
3 the original note. Qualified expert opinions about whether a document is an original with an
4 original signature is evidence that will be helpful to a jury deciding that issue. Plaintiff intends
5 to proffer expert testimony at trial to aid the jury, and OneWest wishes to be able to counter
6 plaintiff’s expert’s testimony with that of its own, as would normally be allowed. The
7 presumably competing expert opinions should assist the jury in coming to the proper
8 conclusion about the note. Further, the discovery schedule for an expert report and deposition
9 that OneWest has proposed need not prolong discovery. It can be scheduled to fit within the
10 timeframe in the Court’s existing Order.

11 OneWest is fully cognizant of the Court’s finding that OneWest has prolonged
12 discovery and delayed the ultimate resolution of this case. Its intent in seeking a discovery
13 schedule that includes an expert report and deposition for its defense is not intended to further
14 prolong this case but merely to prepare an adequate defense for trial. For these reasons,
15 OneWest respectfully requests that its motion be granted.

16 Dated: April 4, 2013.

17 ROUTH CRABTREE OLSEN, P.S.

18 s/ Heidi E. Buck Morrison

19 Heidi E. Buck Morrison, WSBA # 41769
20 Attorneys for Defendants OneWest Bank, F.S.B.,
21 Mortgage Electronic Registration Systems, Inc.,
and Northwest Trustee Services, Inc.

22 LARKINS VACURA LLP

23 s/ Julie R. Vacura

24 Julie R. Vacura, WSBA # 34588
25 Attorneys for Defendant OneWest Bank, F.S.B.
26 and Mortgage Electronic Registration Systems,
Inc.

CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On April 4, 2013, I served the following document(s) described as:

REPLY IN SUPPORT OF ONEWEST'S MOTION TO SCHEDULE EXPERT DISCOVERY

on the party or parties listed on the following page(s) in the following manner(s):

- BY HAND DELIVERY:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by messenger to the street address(es) indicated on the attached service list.
- BY FEDERAL EXPRESS:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by Federal Express to the street address (es) indicated on the attached service list.
- BY FIRST-CLASS MAIL:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be deposited in the United States mail at Portland, Oregon, with first-class postage thereon fully prepaid and addressed to the street address(es) indicated on the attached service list.
- BY FACSIMILE:** For each party, I caused a copy of the document(s) to be sent by facsimile to the facsimile number(s) indicated on the attached service list. If this action is pending in Oregon state court, then printed confirmation of receipt of the facsimile generated by the transmitting machine is attached hereto.
- BY E-MAIL:** For each party, I caused a copy of the document(s) to be sent by electronic mail to the e-mail address(es) indicated on the attached service list. If this action is pending in Oregon state court, then I received confirmation that the e-mail was received.
- BY ECF:** For each party, I caused a copy of the document(s) to be sent by electronic mail via ECF to the e-mail address(es) indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

/s/ Julie R. Vacura

Julie R. Vacura

Ha Thu Dao

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Attorney for MERS